UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

DONNIS DIXON,

: CASE NO. 5:08-CV-2883

Petitioner,

.

vs. : OPINION & ORDER

[Resolving Doc. Nos. <u>1</u> & <u>14</u>]

KEITH SMITH,

Warden,

:

Respondent.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Donnis Dixon petitions for a writ of habeas corpus under <u>28 U.S.C § 2254</u>. [Doc 1.] Petitioner Dixon seeks relief from the nineteen-year sentence that an Ohio state court imposed following his convictions for felony assault, possessing weapons while under disability, improperly handling firearms in a vehicle, and assault. [*Id.*]

Petitioner Dixon raises three grounds for relief: (1) the evidence at trial was insufficient to secure Petitioner's felony assault and assault convictions; (2) ineffective assistance of appellate counsel because appellate counsel did not raise an assignment of error that trial counsel was constitutionally ineffective; and (3) ineffective assistance of appellate counsel because appellate counsel refused to turn over the Petitioner's transcripts from his direct appeal. [*Id.* at 7-9.]

This matter was automatically referred to Magistrate Judge James McHargh pursuant to Local Rule 72.2. On July 1, 2010, Magistrate Judge McHargh issued a Report and Recommendation that recommended this Court deny Dixon's petition. [Doc. 14.]

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Case No. 5:08-CV-2883

Gwin, J.

The Federal Magistrates Act requires a district court to conduct a de novo review only of

those portions of a Report and Recommendation to which the parties have made an objection. 28

U.S.C. § 636(b)(1)(C). Parties must file any objections to a Report and Recommendation within

fourteen days of service. *Id.*; Fed. R. Civ. P. 72(b)(2). Failure to object within this time waives a

party's right to appeal the district court's judgment. Thomas v. Arn, 474 U.S. 140, 145 (1985);

United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court

may adopt the magistrate judge's report without review. See Thomas, 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Moreover,

having conducted its own review of the record and the parties' briefs in this case, the Court agrees

with the conclusions of Magistrate Judge McHargh.

Accordingly, the Court ADOPTS in whole Magistrate Judge McHargh's Report and

Recommendation and incorporates it fully herein by reference, and **DENIES** Dixon's habeas

petition. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

decision could not be taken in good faith, and no basis exists upon which to issue a certificate of

appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: August 20, 2010

James S. Gwin

UNITED STATES DISTRICT JUDGE

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